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21 **UNITED STATES DISTRICT COURT**
22
23 **NORTHERN DISTRICT OF CALIFORNIA**
24
25 **SAN FRANCISCO DIVISION**

26
27
28 IN RE TESLA, INC. SECURITIES
LITIGATION

Case No. 3:18-cv-04865-EMC-KAW

SILVER LAKE'S RESPONSE TO
PLAINTIFF'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL

1 Silver Lake Technology Management, L.L.C. (“Silver Lake”) submits this response to
 2 Plaintiff’s Administrative Motion to File Under Seal. (Dkt. No. 351.)

3 **INTRODUCTION**

4 Silver Lake respectfully requests that the Court permit discrete portions of Exhibits 179,
 5 194 and 201 – which were designated as confidential during discovery and filed under seal by
 6 Plaintiff – to remain under seal. The information should not be publicly filed because it has little
 7 or no relevance to the issues presented in Plaintiff’s motion for summary judgment and its
 8 publication would substantially impair Silver Lake’s business and competitive position.

9 Silver Lake is a global technology investment firm. It raises capital from investors and
 10 invests those funds into the world’s leading technology businesses. (Decl. ¶ 2).¹ The identity of
 11 Silver Lake’s investors is highly-sensitive and confidential. Silver Lake does not publicly or
 12 privately identify them to others in light of the competitive nature of the industry. (Decl. ¶ 3.)
 13 There also is a long-established relationship of confidentiality and Silver Lake is contractually
 14 prohibited from revealing who has invested in its funds. (Decl. ¶ 3.) The manner through which
 15 Silver Lake identifies and analyzes investments is also highly-sensitive and confidential because
 16 Silver Lake uses a proprietary and bespoke methodology. (Decl. ¶ 4.) Full publication of the
 17 three exhibits would reveal that methodology and jeopardize Silver Lake’s long-standing
 18 relationships with investors.

19 **ARGUMENT**

20 Ninth Circuit precedent supports Silver Lake’s narrowly tailored sealing request. A party
 21 seeking to seal information in connection with a dispositive motion must typically articulate
 22 “compelling reasons” to justify its request. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172,
 23 1178-79 (9th Cir. 2006) (internal quotations omitted). Under the compelling reasons standard, the
 24 Court must balance the harm that would result to the party seeking to seal the information against
 25 “the general history of access and the public policies favoring disclosure, such as the public
 26 interest in understanding the judicial process.” *Id.* (internal quotations omitted). In general,

27
 28 ¹ References to “Decl.” refer to the Declaration of Sharon Binger filed concurrently.

1 compelling reasons sufficient to outweigh the public's interest in disclosure exist when the records
 2 relate to "trade secrets," *id.*, or "business information that might harm a litigant's competitive
 3 standing." *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016)
 4 (internal quotations omitted). "The U.S. Supreme Court and the Ninth Circuit have both made
 5 clear that compelling reasons exist to seal court records when the records might be used . . . as
 6 sources of business information that might harm a litigant's competitive standing." *Cont'l Auto.*
 7 *Sys., Inc. v. Avanci, LLC*, 2019 WL 6612012, at *1 (N.D. Cal. Dec. 5, 2019) (internal quotations
 8 omitted).

9 The harm that would result to Silver Lake if the materials were made public far outweighs
 10 the presumption of public access, particularly in light of the fact that the information Silver Lake
 11 seeks to seal has no direct bearing on the issues presented in Plaintiff's motion. *See Oracle*
 12 *Partners, L.P. v. Concentric Analgesics, Inc.*, 2021 WL 1022874, *2 (N.D. Cal. March 17, 2021)
 13 (compelling reasons standard satisfied because names of "non-party shareholders" were non-
 14 public and "irrelevant to the allegations in the complaint"); *Music Grp. Macao Com. Offshore Ltd.*
 15 *v. Foote*, 2015 WL 3993147, at *6 (N.D. Cal. June 30, 2015) (public interest "limited" where
 16 content sought to be sealed "is irrelevant to the Court's decision"); *G&C Auto Body Inc. v. Geico*
 17 *Gen. Ins. Co.*, 2008 WL 687372, *2 (N.D. Cal. Mar. 11, 2008) (sealing third-party information
 18 that was of "little or no relevance to the issues that were raised"). Some courts have even applied
 19 the "good cause" standard when faced with similar circumstances. *See Music Grp. Macao*, 2015
 20 WL 3993147, at *10 (applying good cause standard because the court "did not consider" the
 21 material "in connection with Defendant's dispositive motion"); *G&C Auto*, 2008 WL 687372, at
 22 *3 (applying good cause standard where documents submitted in connection with a dispositive
 23 motion were not actually considered).

24 As explained in the accompanying declaration of Sharon Binger, Silver Lake seeks to
 25 seal/redact portions of Exhibits 179, 194 and 201, and part of one sentence of Plaintiff's brief.
 26 Silver Lake's request is narrowly tailored to aspects of the materials that pose the greatest risk to
 27 its business while having nothing to do with the issues before the Court. Notably, Silver Lake is
 28

1 not seeking to seal any portion of the deposition testimony of Silver Lake’s Co-CEO, Egon Pierre-
 2 Durban, in this matter or before the SEC.

3 First and foremost, the final bullet in Exhibit 194 (and the corresponding text in Plaintiff’s
 4 brief) should remain under seal because it reveals the identities of certain of Silver Lake’s
 5 investors, which Silver Lake does not publicly disclose and have nothing to do with this litigation.
 6 *See Oracle Partners*, 2021 WL 1022874, *2 (sealing names of “non-party shareholders”);
 7 *Johnstech Int’l Corp. v. JF Microtechnology SDN BHD*, 2016 WL 4091388, at *3 (N.D. Cal. Aug.
 8 2, 2016) (sealing documents containing “specific customer names”). Publicly identifying the
 9 names of these investors will jeopardize Silver Lake’s relationship with them and impair its ability
 10 to raise future capital. (Decl. ¶ 8.) As an initial matter, the identified investors expect and
 11 contractually require that their identities remain confidential. (Decl. ¶ 10.) More importantly,
 12 Silver Lake has a compelling business justification for keeping the identity of its investors
 13 confidential, including with respect to market dynamics with other investment firms which, like
 14 Silver Lake, may be soliciting investments from many of the same investors. (Decl. ¶ 9.)

15 Portions of Exhibits 179 and 201 – both of which include broad disclaimers relating to
 16 their confidentiality and the harm that would result to Silver Lake through disclosure – should
 17 remain under seal because they reveal the confidential and proprietary manner through which
 18 Silver Lake analyzes potential investments. (Decl. ¶¶ 15, 20.) *See Lawson v. Grubhub, Inc.*, 2017
 19 WL 2951608, at *9 (N.D. Cal. July 1, 2017) (“business information that might harm a litigant’s
 20 competitive strategy” constitutes compelling reason to seal) (internal quotations omitted); *Ehret v.*
 21 *Uber Techs., Inc.*, 2015 WL 12977024, at *3 (N.D. Cal. Dec. 2, 2015) (granting motion to seal
 22 party’s “sensitive, proprietary business strategy and financial information”); *TVIIM, LLC v.*
 23 *McAfee, Inc.*, 2015 WL 4448022, at *4 (N.D. Cal. July 19, 2015) (information subject to sealing
 24 includes “any formula, pattern, device or compilation of information which is used in one’s
 25 business, and which gives him an opportunity to obtain an advantage over competitors who do not
 26 know or use it”) (internal quotations omitted). Silver Lake’s investment selection and strategy
 27 embodies its substantial experience in the private equity industry and is at the core of the value
 28 Silver Lake offers to its investors. (Decl. ¶ 4.) There is no one-size-fits-all method for vetting

1 potential investments, and competitors would gain an unfair advantage over Silver Lake if Silver
 2 Lake's methodology and underlying perspectives regarding Tesla and the electric vehicle industry
 3 – a substantial and growing sector of the economy – were to be made public. (Decl. ¶¶ 4, 12-14,
 4 18-19.) Moreover, the presentations receive little attention in Plaintiff's brief and thus are not
 5 important to understanding the judicial process. Silver Lake does not object to the public
 6 disclosure of the portions of the presentations mentioned in Plaintiff's brief, *i.e.*, page 29 of
 7 Exhibit 179 and the quoted portions of pages 9 and 58 of Exhibit 201. The extensive analysis in
 8 the remainder of the presentations, however, is neither referenced on those pages nor provides
 9 helpful context to understanding them.

10 Silver Lake has taken a line-by-line approach to analyzing the contents of each slide and
 11 has proposed narrowly tailored redactions for content that, if unsealed, would reflect its
 12 proprietary analysis around the electric vehicle and adjacent industries, and disclose its perspective
 13 around strategy for value creation and other opportunities in these broad industries. (Decl. ¶¶ 12-
 14 14, 18-19.) Silver Lake is in the business of growing companies and making them better, and a
 15 substantial focus of each deck reflects how it would apply its proprietary expertise and industry
 16 views to accomplish those objectives with respect to Tesla. As such, this information and Silver
 17 Lake's approach to analyzing it would be of significant value to a competitor, including because
 18 one could apply similar analyses and perspectives to other companies. (Decl. ¶¶ 4, 13.) On
 19 balance, the harm to Silver Lake arising from the public disclosure of the full presentations far
 20 outweighs any possible benefit to the public.

21 **CONCLUSION**

22 Silver Lake respectfully requests that the Court permit portions of Exhibits 179, 194
 23 (including the corresponding portion of Plaintiff's brief) and 201 to remain under seal.

24
 25 DATED: January 25, 2022

CONRAD | METLITZKY | KANE LLP

26 /s/ Warren Metlitzky
 27 Warren Metlitzky